

firm, or other entity engaged by the Seller.

(b) *Extent of Liability.* Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies Certified by the Under Secretary as provided in §§ 25.8 and 25.9 of this part have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by clear and convincing evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Department during the course of the consideration of such Technology under this section and § 25.9 of this part. A claimant's burden to show fraud or willful misconduct in connection with a Seller's SAFETY Act application cannot be satisfied unless the claimant establishes there was a knowing and deliberate intent to deceive the Department. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers. Such presumption shall apply in perpetuity to all deployments of a Qualified Anti-Terrorism Technology (for which a Certification has been issued by the Under Secretary as provided in this section and § 25.9 of this part) in defense against, response to, or recovery from any Act of Terrorism that occurs on or after the effective date of the Certification applicable to such Technology, provided that the sale of such Technology was consummated by the Seller on or after the earliest date of sale of such Technology specified in such Certification (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Certification.

(c) *Establishing Applicability of the Government Contractor Defense.* The Under Secretary will be exclusively responsible for the review and approval

of anti-terrorism Technology for purposes of establishing the government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies approved by the Under Secretary, as provided in this final rule, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The Certification of a Technology as an Approved Product for Homeland Security shall be the only evidence necessary to establish that the Seller of the Qualified Anti-Terrorism Technology that has been issued a Certification is entitled to a presumption of dismissal from a cause of action brought against a Seller arising out of, relating to, or resulting from an Act of Terrorism when the Qualified Anti-Terrorism Technology was deployed in defense against or response to or recovery from such Act of Terrorism. This presumption of dismissal is based upon the statutory government contractor defense conferred by the SAFETY Act.

#### **§ 25.9 Procedures for certification of approved products for Homeland Security.**

(a) *Application Procedure.* An applicant seeking a Certification of anti-terrorism Technology as an Approved Product for Homeland Security under § 25.8 shall submit information supporting such request to the Under Secretary. The Under Secretary shall make application forms available at <http://www.safetyact.gov>, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. An application for a Certification may not be filed unless the applicant has also filed an application for a Designation for the same Technology in accordance with § 25.6(a). Such applications may be filed simultaneously and may be reviewed simultaneously by the Department.

(b) *Initial Notification.* Within 30 days after receipt of an application for a Certification, the Under Secretary or his designee shall notify the applicant in writing that:

(1) The application is complete and will be reviewed, or

(2) That the application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process.* The Under Secretary or his designee will review each complete application for a Certification and any included supporting materials. In performing this function, the Under Secretary or his designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or non-Federal entity; and

(4) Perform or seek studies or analyses of the Technology.

(d) *Action by the Under Secretary.* (1) Within 90 days after receipt of a complete application for a Certification, the Under Secretary shall take one of the following actions:

(i) Approve the application and issue an appropriate Certification to the Seller;

(ii) Notify the Seller in writing that the Technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) Deny the application, and notify the Seller in writing of such decision.

(2) The Under Secretary may extend the time period one time for 45 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(e) *Designation is a Pre-Condition.* The Under Secretary may approve an application for a Certification only if the Under Secretary has also approved an application for a Designation for the same Technology in accordance with § 25.4.

(f) *Content and Term of Certification; Renewal.* (1) A Certification shall:

(i) Describe the Qualified Anti-Terrorism Technology (in such detail as the Under Secretary deems to be appropriate);

(ii) Identify the Seller(s) of the Qualified Anti-Terrorism Technology;

(iii) Specify the earliest date of sale of the Qualified Anti-Terrorism Technology to which the Certification shall apply (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, the effective date of the Certification); and

(iv) To the extent practicable, include such standards, specifications, requirements, performance criteria, limitations, or other information as the Department in its sole and unreviewable discretion may deem appropriate.

(2) A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the "Application for Certification of an Approved Product for Homeland Security" form issued by the Under Secretary.

(g) *Application of Certification to Licensees.* A Certification shall apply to any other person, firm, or other entity to which the applicable Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or and sell the Technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a "Notice of License of Approved Anti-terrorism Technology" form issued by the Under Secretary. The Under Secretary shall make this form available at <http://www.safetyact.gov> and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(h) *Transfer of Certification.* In the event of any permitted transfer and assignment of a Designation, any related

Certification for the same anti-terrorism Technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(i) *Issuance of Certificate; Approved Product List.* For anti-terrorism Technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism Technology on an Approved Product List for Homeland Security, which shall be published by the Department.

(j) *Block Certifications.* (1) From time to time, the Under Secretary, in response to an application submitted pursuant to § 25.9(a) or at his own initiative, may issue a Certification that is applicable to any person, firm or other entity that is a qualified Seller of the Approved Product for Homeland Security described in such Certification (a "Block Certification"). All Block Certifications shall be published by the Department within ten days after the issuance thereof at <http://www.safetyact.gov>, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Any person, firm, or other entity that desires to qualify as a Seller of an Approved Product for Homeland Security under a Block Certification shall complete only such portions of the application referenced in § 25.9(a) as are specified in such Block Certification and shall submit such application to the Department in accordance with § 9(a). Applicants seeking to be qualified Sellers of an Approved Product for Homeland Security pursuant to a Block Certification will receive expedited review of their applications and shall not be required to provide information with respect to the technical merits of the Approved Product for Homeland Security

that has received Block Certification. Within 60 days (or such other period of time as may be specified in the applicable Block Certification) after the receipt by the Department of a complete application, the Under Secretary shall take one of the following actions:

(i) Approve the application and notify the applicant in writing of such approval; or

(ii) Deny the application, and notify the applicant in writing of such decision, including the reasons for such denial.

(2) If the application is approved, commencing on the date of such approval, the applicant shall be deemed to be a Seller under the applicable Block Certification for all purposes under the SAFETY Act, this part, and such Block Certification. A Block Certification shall be valid and effective for the same period of time for which the related Block Designation is issued. A Block Certification may be renewed by the Under Secretary at his own initiative or in response to an application for renewal submitted by a qualified Seller under such Block Certification in accordance with § 25.9(g). Except as otherwise specifically provided in this paragraph, a Block Certification shall be deemed to be a Certification for all purposes under the SAFETY Act and this part.

#### **§ 25.10 Confidentiality and protection of Intellectual Property.**

(a) *General.* The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality procedures for safeguarding, maintenance and use of information submitted to the Department under this part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

(b) *Non-Disclosure.* Except as otherwise required by applicable law or regulation or a final order of a court of competent jurisdiction, or as expressly authorized in writing by the Under